

REMARKS

Reconsideration and withdrawal of the rejection and the allowance of all claims now pending in the above-identified patent application (*i.e.*, Claims 11-21) are respectfully requested in view of the foregoing amendments and the following remarks.

At the outset, it should be recalled that the present invention pertains to a flap shutter for combo packaging and carton packaging, in which the packaging opens automatically when unfastened. The closure can also be used for combo packaging or carton packaging, in which free-flowing substances, such as, sugar, powder, all kinds of chemicals and similar substances can be preserved and packed. When the closure functions for such combo packaging, which are produced from laminates reinforced with plastic sheeting, then it is clear that they can also be used in simple paper or carton packaging, which, owing to the absence of the laminated foils, can be torn quite easily.

More particularly, and as presently claimed, the instant invention provides a flap shutter for combo and carton packaging for automatic opening of a packing by opening a closure lid, which includes a frame base element having a flat bottom side for connecting with a combo or carton packing. The frame base element further includes a peripheral projection projecting upwardly for forming an outflow support opening within said frame base element. A lid is connected to, and swivelling on, the frame base element for closing the outflow support opening formed by the frame base element and for opening and closing the frame base element. A guide element, that is capable of swivelling on the frame base element, extends over an inner side of the peripheral projection with the

swivel axis of the guide element running parallel to, and in front of, the swivel axis of the lid. There is included active forced-closure means located between the guide element and the lid for allowing the guide element to be swiveled downwardly by opening the lid for cutting, tearing or pushing downwardly a packaging lying below the guide element in a swivelling direction opposite the swivelling direction of the lid in an automatic manner and without a user having to push downwardly with a finger of the user, so that when seen in a side view, the lid swivels in a first direction and the guide element swivels in a second direction with the second direction being defined in pending independent Claim 11 as being in a direction opposite to the first direction.

As will be explained in greater detail hereinafter, nowhere in the prior art is such a novel and efficient flap shutter for combo and carton packaging for automatic opening of a packing by opening a closure lid, which includes active forced-closure means located between a guide element and the lid for allowing the guide element to be swiveled downwardly by opening the lid for cutting, tearing or pushing downwardly a packing lying below the guide element in a swivelling direction opposite the swivelling direction of the lid in an automatic manner and without a user having to push downwardly with a finger of the user, so that the lid swivels in a first direction and the guide element swivels in an opposite direction thereto, either disclosed or suggested.

By the present amendments, Applicant has amended independent Claim 11 (and all remaining claims via dependency) to now recite that the active forced-closure means located between the guide element and the lid is operable --in an automatic manner and

without a user having to push downwardly with a finger of the user-- for the purpose of clarifying the structure and operation of the present invention over that taught and suggested by the prior art, which, as explained below, necessarily requires a user to push downwardly on a lower segment of an analogous “active forced-closure means” with at least one finger (*e.g.*, whether an index finger or a thumb.) The “automatic opening” achieved by the present invention is intended to avoid the requirement of a user having to use one or more fingers for an analogous operation, as explained in Applicant’s Specification, *e.g.*, at Page 2, ¶ 4.

Accompanying the present *Amendment in Response to the Final Office Action*, Applicant is filing a *Request for Continued Examination* and remitting the requisite *RCE* filing fee. Accordingly, the “finality” of the last Office Action should be withdrawn and the foregoing amendments presented herein entered, and considered on their merits, as a matter of right.

Turning now, in detail, to an analysis of the Examiner’s prior art rejection, in the latest Office Action the Examiner has rejected independent Claim 11 (and various dependent claims) as being anticipated, pursuant to 35 U.S.C. §102(b), by Robichaud *et al.*, U.S. Patent No. 4,934,590. It is the Examiner’s contention that the applied art of Robichaud *et al.* discloses a flap shutter for combo and carton packaging that includes a frame base element having a flat bottom side for connecting with a combo or carton packing, as well as “active forced-closure means,” as illustrated in FIG. 15, located between the guide element and the lid thereof for allowing the guide element to be

swiveled downwardly by opening the lid, as well as the remaining structural elements recited most broadly in independent Claim 11, thereby anticipating that which is being claimed by the instant Applicant.

In reply to the Examiner's 35 U.S.C. §102(b) anticipation rejection applying Robichaud *et al.*, Applicant respectfully submits that the applied citation fails to teach or suggest the "active forced-closure means," as now recited in Applicant's independent Claim 11, which provides that such means are "automatic" and do not require "a user having to push downwardly with a finger," in contrast to the closure means disclosed by Robichaud *et al.*

More particularly, in the applied reference, the tongue, or lower segment (106), must be "pushed downwardly into the package" to initiate opening thereof. *See*, Robichaud *et al.* at Col. 6, lines 49-53 ("In order to initiate package opening, the lower segment **106** is pushed downwardly into the package **112** after breaking through the scored region of the top, as shown in FIG. 13.") The "downward pushing" required by the apparatus of Robichaud *et al.* necessarily requires the use by a person of one or more fingers of the person's thumb. To initiate the opening of a package, Robichaud *et al.* neither teaches nor suggests any "automatic" means or means dispensing with the use of one's fingers or hands, as is taught in Applicant's Specification and now clarified in the body of independent Claim 11 (and all remaining claims via dependency.)

In view of newly-amended independent Claim 11, which now recites that the "active forced-closure means" of the present invention operates "in an automatic manner


and without a user having to push downwardly with a finger of the user,” in contrast to that disclosed and suggested by Robichaud *et al.*, withdrawal of the Examiner’s 35 U.S.C. §102(b) anticipation rejection of the most recent Office Action is respectfully requested.

In light of the foregoing, it is respectfully contended that all claims now pending in the above-identified patent application (*i.e.*, Claims 11-21) recite a novel and efficient flap shutter for combo and carton packaging for automatic opening of a packing by opening a closure lid, which includes active forced-closure means located between a guide element and the lid for allowing the guide element to be swiveled downwardly by opening the lid for cutting, tearing or pushing downwardly a packing lying below the guide element in a swivelling direction opposite the swivelling direction of the lid in an automatic manner and without a user having to push downwardly with a finger of the user, so that the lid swivels in a first direction and the guide element swivels in an opposite direction thereto, which is patentably distinguishable over the prior art.

Accordingly, withdrawal of the outstanding rejection and the allowance of all claims now pending are respectfully requested and earnestly solicited.

Respectfully submitted,

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Enc.: 1. *Request for Continued Examination*; and,
2. EFT for \$810.00 (*RCE Filing Fee*).

The Commissioner for Patents is hereby authorized to charge the Deposit Account of Applicant's Attorney (*Account No. 19-0450*) for any fees or costs pertaining to the prosecution of the above-identified patent application, but which have not otherwise been provided for.